IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application No.:	09/773,393
Filing Date:	January 31, 2001
Appellants	Gregory W. Goodknight and Cisco Technology, Inc.
For:	PACKET TELEPHONY ACROSS THE PUBLIC SWITCHED TELEPHONE NETWORK
Examiner:	Donald L. Mills
Group Art Unit:	2616 Confirmation No. 4235
Date:	July 14, 2008

APPELLANTS' REPLY BRIEF UNDER 37 C.F.R. § 41.41

This Reply Brief is in response to the Examiner's Answer mailed May 14, 2008.

The Examiner's Response to Arguments

In the Examiner's answer, the Examiner responded to arguments with one general point and points related to claims 22-26 and 27-31.

The Examiner's General Point

On page 6 of the Reply Brief, the Examiner states that "Appellants arguments do not comply wit 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which

he or she thinks the claims present in view of the art disclosed by the references cited or the objections made."

Appellant objects to this characterization. While it is true Appellant did make a general point about the reference cited (ITU V.8 bis 1999) on page 5, the remaining arguments specifically point out what the claim language stated and why the reference does not teach the features claimed.

<u>Points with Regard to claims 22-26</u>

With regard to claim 22, the Examiner states, "Note, the claim does not directly or indirectly state that certain claim elements, such as the converter or controller, are avoided or averted during operation." Applicant respectfully disagrees.

Claim 22 requires *a converter to receive <u>a packet data stream intended for a packet domain</u> and <u>to convert the packet data stream into an altered data stream</u> intended for transmission through a public switched telephone network* [emphasis added], and *a controller to...send <u>the packet data stream</u> to the other network device, if the network device determines that the other network device is a packet device that can receive packet data* [emphasis added].

This language, at the least indirectly, shows that the converter is not used when the packet data stream is being sent to the other network device. The converter converts the packet data stream to the altered data stream. If the controller is sending the packet data stream, not the altered data stream created by the converter, it is obvious that the converter is not being used.

Further, there seems to be some confusion with regard to modems and packet data streams in the Examiner's interpretation of the ITU V.8 bis (1999) Recommendation. In several places, the Examiner discusses a 'modem-based' communications mode, which is apparently how the Examiner interprets the term 'packet data.' For example, on page 9, a modem is equated

to a voice gateway. However, as discussed in the Appellant's specification on page 3, line 19, a modem is a PSTN converter, the converter that is not involved in sending the packet data stream across the PSTN.

The ITU-T Recommendation does indeed disclose switching between voice and modem communications. It must be noted that the only mode of data communication disclosed is modem based. See ITU-T Recommendation V.8 bis (1999) Appendix I.1, I.2, and I.3. Of especial note, in I.3, there is a discussion of the selection of the mode of communication between modems. The selection of the communications mode includes, "the type of modem used by the desired communications mode, together with the details of the communications mode, may be established via V.9 bis and then automatically selected." Therefore the common mode of communication applies to modem based communications.

Modem-based communication does not involve transmission of packet data streams. As discussed above, the modem would be converter that converts a packet data stream into the altered data stream. Therefore, converting from a packet data stream using a modem (converter) produces the altered data stream. However, nowhere in the ITU-T Recommendation does it disclose switching to a mode where data is transmitted as a *packet data stream*.

Additionally, the sending of a packet data stream to another network device, instead of sending the altered data stream, is indeed Packet Relay Across Telephony (PRAT). This contradicts that Examiner's statement that Appellant does not specifically recite the term PRAT. The definition of PRAT is included in the claim language without using the acronym.

With regard to claim 23, the Examiner has equated a voice gateway, a packet network device, with a modem, which is not a valid comparison. Again, the operating modes established

apply only to the telephony mode, not the modem mode, and as the modem is a converter, even the modem mode does not disclose a packet data stream.

With regard to claim 24, the ITU-T Recommendation does not disclose a packet stream, for the reasons as discussed above. The confusion about the difference between a modem (converter) generated altered data stream and a packet data stream has carried through to this argument.

With regard to claim 25, the Examiner's Replay states, "the Appellant argues that the ITU-T Recommendation does not disclose *wherein the converter comprises one of either a voice coder/decoder or modem.*" Actually, what the Appellant stated was, "With regard to claim 25, the 1999 ITU Recommendation does not teach a network device that has a converter that may be avoided, much less that the converter is a voice coder/decoder, nor does it teach that the converter being a modem and that the modem is avoidable." Appellant apologizes for whatever confusion this language caused. The point the Appellant was attempting to make was that the ITU-T Recommendation does not disclose the avoidance of a converter, such as a modem or voice coder/decoder, to transmit the packet data stream across the PSTN.

With regard to claim 26, the controller does establish common modes of operating in the telephony mode, as discussed in detail above. See the Recommendation, Appendix I, specifically I.4.

Points with Regard to claims 27-31

The Appellants submit that the same confusion with regard to the modem and the packet data stream exist with regards to claims 27-31 and were evident in the arguments against claims 22-26.

First, the transmission of the packet data stream to the other network device at the very least indirectly claims the avoidance of a controller that converts the packet data stream to an altered data stream.

Second, a modem is an example of a converter.

Third, the switching from voice to data disclosed in the ITU-T Recommendation is switching between voice mode and modem mode.

Fourth, the modes of operation in the ITU-T Recommendation are related to selection of operational modes for the modem mode of communication.

Therefore, the ITU-T Recommendation does not disclose relaying a packet data stream across a PSTN line, instead of sending an altered data stream from a converter (modem).
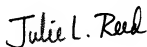
Conclusion

For the foregoing reasons, the Appellants request that the Board reverse the Examiner's rejections of the Appellants' claims.

Customer No. 20575

Respectfully submitted,

MARGER JOHNSON & MCCOLLOM, P.C.

Julie L. Reed

Julie L. Reed
Reg. No. 35,349

210 SW Morrison Street
Suite 400
Portland, Oregon 97204
(503) 222-3613